

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

JACOB ROGINSKY,)
Complainant,)
)
UNITED STATES)
DEPARTMENT OF JUSTICE)
OFFICE OF SPECIAL COUNSEL)
FOR IMMIGRATION RELATED)
UNFAIR EMPLOYMENT)
PRACTICES)
Intervenor,)
)
v.) 8 U.S.C. §1324b Proceeding
) Case No. 90200168
DEPARTMENT OF DEFENSE,)
Respondent.)
_____)

ORDER GRANTING STAY OF PROCEDURES

(August 8, 1991)

By written motion tendered on August 7, 1991, Complainant and Intervenor, reciting that the parties had on August 5, 1991 "entered into a Memorandum of Understanding which, if its terms are carried out, will provide for the settlement and dismissal of this action" ask a stay of proceedings until at least May 1, 1992. During a telephonic prehearing conference held today at my instance, Respondent by counsel concurs in the request.

The parties have undertaken and assured me that the merits of this case are in fact the subject of an agreed disposition in all respects, subject only to implementing steps which are expected to take several months to complete, including the orderly transition by Complainant from his current post-doctoral fellowship to a position within or under the control of Respondent, and including accomplishment of necessary security clearance procedures. Because of the delay inherent for those reasons in accomplishing the employment aspects

of the settlement, I concur here and depart from my customary practice of requiring that a case be fully resolved before canceling the evidentiary hearing.

Accordingly, the evidentiary phase of the hearing scheduled to resume August 19, 1991 is canceled. As agreed, the parties will be expected to file a written status report not later than January 15, 1992 and again on May 1, 1992 unless prior to such dates they shall have filed appropriate pleadings seeking dismissal or further procedures.

As agreed, I will issue an opinion expanding upon my ruling at the prehearing conference held May 1, 1991, as confirmed in the Third Prehearing Conference Report And Order (May 6, 1991), 1 OCAHO 324. That ruling concluded, after finding a sufficient Congressional waiver, that under 8 U.S.C. §1324b the defense of sovereign immunity to an action under §1324b is not available to Respondent.

During the conference I have declined to expand by further issuance on any earlier orders except to the extent that one or the other or all of the parties might tender a draft opinion as the predicate for such issuance.

SO ORDERED.

Dated this 8th day of August, 1991.

MARVIN H. MORSE
Administrative Law Judge